IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE ELEVENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 6922 of 2004

Between:

K. Viswanadham, S/o. Late K. Lakshmi Narasaiahm,
R/o. 22-1-426, Chaderghat, Hyderabad - 24.

..... PETITIONER

AND

1. Andhra Pradesh State Financial Corporation, Hyderabad Branch, 5-9-194,

Ground Floor, Chirag Ali Lane, Hyderabad, rep. by its Assistant General

Manager.

2. M.Raghava Rao, S/o M.Venkateswarlu, Aged about 48 years,

Business, R/o 1-9-1122/1/1, Apple House, Vidyanagar,

Hyderabad.

(Second Respondent is impleaded as per Court Order dated 11-11-2004

in W.P.M.P.No.19163 of 2004)

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus, or any other appropriate Writ, Order or Direction, directing the respondent corporation to receive the loan amount pertaining to the Loan Account No.57899215 of the petitioner and settle the account.

Counsel for the Petitioner : Smt.S.SWARNA REDDY

Counsel for the Respondent No.1: Mr.Y.N.LOHITA

Counsel for the Respondent No.2: Mr.R.V.SUBBA RAO

The Court made the following :

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ORDER:

Heard both sides and at their request the main writ petition itself is taken up for disposal.

2. The petitioner herein, a lonee from the respondent-corporation, filed this Writ Petition, inter alia, seeking writ of Mandamus for directions to the said Corporation to receive the entire loan amount pertaining to loan Account No.57899215 of the petitioner and settle accounts accordingly.

3. The case of the petitioner is that he has obtained a loan of Rs.19,17,000/- vide aforesaid loan account from the respondent in the year 1998 for the purpose of constructing a commercial complex at Lakdikapool, which is named as Kuthuru Complex. Accordingly, the construction was completed in the year 2003. However, they could not sell the developed complex. However, the respondent herein insisted for discharge of the said loan amount and earlier attempts on their part to conduct the auction was withdrawn, having regard to a writ filed by the petitioner himself. Now the respondent has issued fresh notification on 03-11-2003 for conducting public auction on 13-11-2003 and called for the tenders. It is submitted that the total plinth area of each floor is 4000 sq. ft., thus, coming to 14,000 sq. ft., excluding cellar and the total market value presently is Rs.2,000/- per sq. ft., which amounts to Rs.2.80 crores. Since the loan amount is hardly a sum of Rs.30,00,000/-, including the interest, the respondents ought not have put the entire complex in the entire land of 564 sq. yards for auction. Therefore, there is absolutely no nexus between the amount to be recovered and to the total value of the property in question. Hence, the petitioner has come out with an offer that he has prepared to pay the entire amount due to the respondent herein or in the alternative it would suffice to sell one floor of the said entire complex, which would fetch the entire loan amount. Though the

petitioner has given such offer, the same has not been accepted and no notice or opportunity has given before such sale is being conducted by them. Hence, the Writ Petition.

4. In the counter-affidavit filed by the respondent-corporation, it is stated that there is no dispute in regard to the sanction of term loan of Rs.19.17 lakhs in favour of the petitioner on 24-12-1998 and disbursing the same for arranging the petitioner to construct a commercial complex. The said land was sanctioned after securing the equitable mortgage of the land and building and hypothecation of plant and machinery after completion of all the legal formalities in this regard by 05-01-1999. The loan was availed on 06-01-1999. As per the terms, the petitioner was required to repay loan commencing from one year from the date of the first disbursement, which was made on 06-01-2000. It was submitted that in terms of the recall-cum-sale notice dated 07-09-2001, the petitioner has remitted a sum of Rs.1,74,000/- on 15-09-2001, which only clears part of the interest arrears, and by way of an application dated 15-09-2001 he sought for withholding of the action to be taken by the Corporation under Section 29 of the State Financial Corporation Act (for short 'the Act'). In spite of the petitioner being called upon to clear the entire outstanding arrears, there is no response from him and this was followed by several notices by the Corporation. In terms of the Section 29 of the Act, respondent-corporation issued sale advertisements on 10-05-2001, 03-10-2002, 01-05-2003 and 03-11-2003 in the local newspapers. In response thereto, corporation has received an offer from the Hotel Fist Land, which is being run on the 1st floor of the very same complex on 12-11-2003, offering to purchase of the 1st floor of the commercial complex for a consideration of Rs.33,00,000/- on loan basis, repayable within seven years. This was followed by second offer by the 2nd respondent on 31-12-2003 for purchase of second floor for a consideration of Rs.26,00,000/- and third floor for Rs.25,00,000/- on 100% down payment basis. During the course of negotiations in the Operations Committee Meeting on 06-01-2004, the first tenderer had filed an offer in a sum of Rs.33,00,000/- for purchasing the second floor only and further offered to pay a sum of Rs.10,00,000/- by way of down payment and the balance to be treated as loan repayable in five years. Thereafter, the second respondent finally offered a sum of Rs.80.22 lakhs for the second and third floors on 100% down payment basis. As per the meeting held on 06-01-2004, the Operations Committee approved the said offer for a consideration of Rs.80.22 lakhs. However,

2nd respondent upon coming to know that the third floor was unauthorisedly constructed by the petitioner, offered and opted for purchasing the second floor only for a consideration of Rs.40.11 lakhs and the same was considered as reasonable by the respondent-corporation. Accordingly, the Corporation has received total consideration of Rs.24,11,000/-, as mentioned in the counter. As regards the balance on the offer given by him, it was considered and approved by the Corporation to be treated as a loan. Consequently, as per the agreement entered into on 02-07-2004, the possession has been handed over to the said person, who has been subsequently impleaded as 2nd respondent. Accordingly, a due panchanama was also made on 03-07-2004. Having regard to such developments and the sale already made in favour of the 2nd respondent, the claim of the petitioner herein now with an offer to pay the entire amount or to make any such alternative arrangement, is not sustainable nor justified.

5. On the same lines, as that of the 1st respondent herein the 2nd respondent by way of counter reiterated the allegations and confirming the above purchase being finalized in his favour by the Corporation.

6. Having considered the submissions made and on perusal of the material, the only question, which falls for consideration is, whether on the facts and circumstances of the case the proposal made by the petitioner herein is sustainable?

7. There is no dispute to the fact that the petitioner availed the substantial loan for the purpose of construction of complex and after availing the amounts thereunder he was already constructed the same. However, according to the petitioner the said property could not be sold and therefore the amounts could not have realized. There is no dispute to the fact that the respondent-corporation had made several demands including by way of issuance of notices and there was no proper response from the petitioner, except making a payment of Rs.1,74,000/- on 15-09-2001. The sale advertisements were being made in exercise of powers under Section 29 of the Act commencing from 10-05-2001 and onwards. Ultimately, an offer was made by the existing person in the same complex, who was running a hotel. The offer was accepted, agreement had been entered into and possession has been given to the 2nd respondent. Having regard to all these developments and the action, as initiated under Section 29 of the Act, the offer as now sought to be made by way of this Writ Petition is not only belated but also does not bear any bona fidies. There is

absolutely no explanation forthcoming on behalf of the petitioner, as to why he could not immediately responded to various notices issued to him by the Corporation. In fact, as per the terms, the petitioner was required to repay loan commencing from one year from the date of the first disbursement, which was made on 06-01-2000. Therefore, he ought to have commence the payment from January 2001 onwards. Except the aforesaid payment, which is far beyond the first year's limit, there is no other offer or payment from the petitioner's side. There is also no explanation as to why the petitioner could not sell the complex and realized the amounts. The transaction between the 2nd and 1st respondent herein has been made by way of offer and acceptance and possession has already been delivered. It is not only too late on the part of the petitioner to make any challenge in regard to the action taken by the respondent herein, but also totally devoid of any merits, nor is supported by either on facts or law. Hence, I do not find any merits in the Writ Petition.

8. Accordingly, the Writ Petition is dismissed. No costs.

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B.PRAKASH RAO, J.

Dated 11-11-2004.

SKMR

To

1. The Assistant General Manager, Andhra Pradesh State Financial Corporation, Hyderabad Branch, 5-9-194, Ground Floor, Chirag Ali Lane, Hyderabad,

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